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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

NEHEMIAH ROBINSON J-71342
CALIPATRIA STATE PRISON (ASU, E-POD #148
P.O. BOX 5008
CALIPATRIA, CA. 92233

NUNC PRO TUNC
AUG - 5 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

NEHEMIAH ROBINSON,
Plaintiff,
v.
T. CATLETT, ET AL.,
Defendants.

08-CV-00161-H (BLM)

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT.

HEARING: JULY 29, 2008
TIME: 9:00 A.M
COURTROOM: SUITE 5140
JUDGE: THE HONORABLE BARBARA L. MAJOR

TO THE HONORABLE COURT AND DEFENDANTS:

PLAINTIFF RESPECTFULLY ASK THIS COURT TO TAKE JUDICIAL NOTICE OF CERTAIN DOCUMENTS WHICH ARE REFERENCED IN DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT.

PLAINTIFF OBJECTS TO THE DOCUMENTS INTRODUCED BY THE DEFENDANT'S ON THE GROUNDS THAT 1.) DEFENDANT'S MAY NOT ATTACH TO A RULE 12(b)(6) MOTION AFFIDAVITS OR OTHER EVIDENCE CONTESTING ALLEGATIONS MADE IN

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PLAINTIFFS COMPLAINT. IN DOING THIS, THE COURT SHOULD EITHER EXCLUDE THE EVIDENCE OR CONVERT THE MOTION INTO A RULE 56 MOTION FOR SUMMARY JUDGMENT. Fed. R. Civ. P. 12(b)., 2.) IN DECIDING A RULE 12(b)(6) MOTION, THE DISTRICT COURT MUST ASSUME THAT EVERY FACT ALLEGED IN PLAINTIFF'S COMPLAINT IS TRUE. IT MUST ALSO DRAW ALL REASONABLE INFERENCES FROM THOSE ALLEGATIONS IN PLAINTIFF'S FAVOR. UNITED STATES V. GAUBERT, 499 U.S. 315, 327 (1991); SCHEUER V. RHODES, 416 U.S. AT 236-37., 3.) THE DOCUMENTS INTRODUCED "ARE NOT" TRUE COPIES OF RECORDS AS STATED BY D. BELL[1], APPEALS COORDINATOR AT CALIPATRIA STATE PRISON. THUS, THE COURT CAN NOT ADEQUATELY AND ACCURATELY EVALUATE PLAINTIFF'S CLAIMS BASED ON THE DOCUMENTS INTRODUCED BY DEFENDANTS. SPECIFICALLY, EXH. #1 (ROBINSON, NEHEMIAH V. T. CATLETT, et al. U.S.D.C - SOUTHERN DISTRICT CASE NO. 08-CV-00161-H (BLM).) IS NOT A TRUE AND CORRECT COPY; EXH. #2 (ROBINSON, NEHEMIAH V. T. CATLETT, et al. U.S.D.C - SOUTHERN DISTRICT CASE NO. 08-CV-00161-H (BLM) IS NOT A TRUE AND CORRECT COPY; EXH. #3 (ROBINSON, NEHEMIAH V. T. CATLETT, et al. U.S.D.C - SOUTHERN DISTRICT CASE NO. 08-CV-00161-H (BLM).) IS A TRUE AND CORRECT COPY; EXH. #4 (ROBINSON, NEHEMIAH V. T. CATLETT, et al. U.S.D.C - SOUTHERN DISTRICT CASE NO. 08-CV-00161-H (BLM).) IS NOT A TRUE AND CORRECT COPY.

PLAINTIFF OBJECTS TO THE INTRODUCTION OF THE FOREGOING DOCUMENTS BEING INTRODUCED INTO EVIDENCE FOR CONSIDERATION OF DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR PLAINTIFF'S REASONS STATED IN 1.) THROUGH 3.) ABOVE. AND ASK THAT SAID DOCUMENTS BE DISMISSED AND/OR

[1] PLAINTIFF ASSERT THAT THE DECLARATION OF D. BELL IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE, IS UNDER PENALTY OF PERJURY UNDER THE LAWS OF CALIFORNIA AND THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. (SEE DECLARATION OF D. BELL IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE, DATED JUNE 6TH, 2008, AT CALIPATRIA, CALIFORNIA. PLAINTIFF HAS PROOF THAT D. BELL HAS COMMITTED AN ACT OF "PERJURY", WHICH IS A CLEAR VIOLATION OF PENAL CODE SECTION 118. (a) (b), AND FEDERAL LAW.

STRICKEN FROM THE RECORD.

" A JUDICIAL NOTICED FACT MUST BE ONE NOT SUBJECT TO REASONABLE DISPUTE IN THAT IT IS EITHER (1) GENERALLY KNOWN WITHIN THE TERRITORIAL JURISDICTION OF THE TRIAL COURT OR (2) CAPABLE OF ACCURATE AND READY DETERMINATION BY RESORT TO SOURCES WHOSE ACCURACY CANNOT REASONABLY BE QUESTIONED. Fed. R. Evid. 201 (b). " A COURT SHALL TAKE JUDICIAL NOTICE IF REQUESTED BY A PARTY AND SUPPLIED WITH THE NECESSARY INFORMATION." Fed. R. Evid. 201 (d). A COURT MAY TAKE JUDICIAL NOTICE OF FACTS WITHIN DOCUMENTS REFERENCED IN A COMPLAINT IN RULING ON A MOTION TO DISMISS. BELL ATLANTIC CORP V. TWOMBLY, ____ U.S. ____, 127 S. Ct. 1955, 1973 n. 13 (2007); Fed. RULE Evid. 201.

PLAINTIFF ASK THIS COURT TO TAKE JUDICIAL NOTICE OF THE FOREGOING "NO. 3.)"; AND OF THE CONTENTS OF THE FOLLOWING DOCUMENTS WHICH ARE REFERENCED BY DEFENDANTS' IN THEIR MOTION TO DISMISS.

1. PLAINTIFF'S INMATE APPEAL DATED MARCH 29, 2006, AND ATTACHED DOCUMENTS INCLUDING THE REASONABLE ACCOMMODATION REQUEST, CHRONOS, AND FIRST, SECOND AND DIRECTOR'S LEVEL RESPONSES REFERENCED BY DEFENDANTS' IN THEIR REQUEST FOR JUDICIAL NOTICE AT PAGE 2 LL 8-11, TRUE AND CORRECT COPIES OF WHICH ARE ATTACHED AS EXHIBIT 1 TO DECLARATION OF N. ROBINSON IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE.

2. PLAINTIFF'S INMATE APPEAL DATED JUNE 18, 2007, AND ATTACHED DOCUMENTS INCLUDING THE FIRST, SECOND, AND DIRECTOR'S LEVEL RESPONSES REFERENCED BY DEFENDANTS' IN THEIR REQUEST FOR JUDICIAL NOTICE AT PAGE 2 LL 12-15, TRUE AND CORRECT COPIES OF WHICH ARE ATTACHED AS EXHIBIT 2 TO DECLARATION OF N. ROBINSON IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE.

3. PLAINTIFF'S REASONABLE MODIFICATION OR ACCOMMODATION REQUEST

DATED SEPTEMBER 11, 2007, AND ATTACHED DOCUMENTS INCLUDING MEDICAL DOCUMENTS CHRONOS AND RESPONSES REFERENCED BY DEFENDANTS IN THEIR REQUEST FOR JUDICIAL NOTICE AT PAGE 2 LL 16-19, TRUE AND CORRECT COPIES OF WHICH ARE ATTACHED AS EXHIBIT 3 TO TO DECLARATION OF N. ROBINSON IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE.

4. PLAINTIFF'S INMATE APPEAL DATED SEPTEMBER 12, 2007, AND ATTACHED DOCUMENTS INCLUDING CHRONOS, A CRIME INCIDENT REPORT, A RULES VIOLATION REPORT AND FIRST, SECOND, AND DIRECTOR'S LEVEL RESPONSES REFERENCED BY DEFENDANTS' IN THEIR REQUEST FOR JUDICIAL NOTICE AT PAGE 2 LL 20-22, PAGE 3 LL 1-2, TRUE AND CORRECT COPIES OF WHICH ARE ATTACHED AS EXHIBIT 4 TO DECLARATION OF N. ROBINSON IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE.

DATED: JULY 30, 2008.

RESPECTFULLY SUBMITTED,

Mr. Nehemiah Robinson

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